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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

EMONSTER KK., a Japanese corporation, and) CASE NO.: 3:17-cv-05986-RS
ENRIQUE BONANSEA,)

Plaintiff,)

vs.)

APPLE INC., a California corporation,)

Defendants.)

**DECLARATION OF MARY MAZZELLO IN
SUPPORT OF DEFENDANT'S OPPOSITION
TO PLAINTIFFS' ADMINISTRATIVE
MOTION TO SHORTEN TIME FOR THEIR
MOTION FOR PRELIMINARY
INJUNCTION**

1 I, Mary Mazzeo, declare as follows:

2 1. I am a partner at Kirkland & Ellis LLP and am competent to testify to the following
3 statements if called upon to do so. I submit this declaration in opposition to Plaintiffs' motion
4 k.k.'s and Enrique Banansea's (collectively, "emonster" or "Plaintiffs") Administrative Motion to
5 Shorten Time for their Motion for Preliminary Injunction.

6 2. On September 12, 2017, Apple Inc. ("Apple") announced the Animoji app, an iPhone
7 X feature that, according to Apple's press release, allows users to "bring[] emoji to life" by
8 "animat[ing]" their facial expressions to create animated emojis or animojis. A copy of this press
9 release is attached as Exhibit 4 to the Declaration of Katherine Peaslee in Support of Plaintiffs'
10 Motion for Preliminary Injunction, dated October 18, 2017, Dkt No. 2-1.

11 3. On September 12, 2017, Apple also announced that the iPhone X would be available
12 for pre-sale on October 27, 2017 and launch on November 3, 2017. This launch date was widely
13 publicized. Time, NY Magazine, The Guardian, Wired, CNN, The Verge, CNET, Variety, and
14 numerous other news sources published articles on or about September 12, 2017 describing the
15 iPhone X and noting its release date.

16 4. That same day, September 12, 2017, emonster sent Apple a cease and desist letter
17 demanding that Apple cease its use of the term "animoji" by September 29, 2017 and requesting that
18 Apple contact emonster if it was interested in licensing or acquiring emonster's purported rights in
19 the word "animoji."

20 5. Apple responded to the cease and desist letter on September 29, 2017 as requested,
21 explaining that it did not believe that emonster had trademark rights in the term "animoji" as
22 emonster was neither the first nor only user of this term. Apple, however, explained that although it
23 would not cease its use of the term "animoji," it was willing to discuss an amicable resolution to this
24 conflict.

25 6. Nearly three weeks passed, and Apple received no response to its letter.

26 7. In the evening on Wednesday, October 18, 2017, Plaintiffs filed a motion for a
27 preliminary injunction against Apple.
28

1 8. Lead counsel for Apple received an email at 12:02 am Eastern Time on Thursday,
2 October 19, 2017 from Plaintiffs' counsel asking Apple to agree to the expedited briefing schedule.
3 To the best of my knowledge, Apple's lead counsel in this litigation received this email because she
4 also is lead counsel for Apple in a cancellation proceeding regarding Plaintiffs' improper registration
5 of the ANIMOJI mark.

6 9. Without waiting for a response, less than 14 hours after sending this request,
7 Plaintiffs moved for a shortened briefing schedule.

8 10. Apple's lead counsel had earlier provided Plaintiffs' trademark prosecution attorney
9 with her cell phone number, but Plaintiffs did not call Apple's counsel regarding the motion.

10 11. In addition, my contact information was listed in the records for the cancellation
11 matter, but I was not contacted about the preliminary injunction motion or the request for expedited
12 briefing.

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14 I declare under the penalty of perjury under the laws of the United States that the foregoing is
15 true and correct.

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17 Dated: October 20, 2017

Respectfully submitted,


Mary Mazzello

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/s/ Diana M. Torres
Diana M. Torres